

e-Alert

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Rhode Island Enacts Significant Amendments to Pay Equity Law

Background

Effective January 1, 2023, Rhode Island has enacted amendments to its current wage discrimination laws. This includes expanding on protected characteristics, redefining the wage discrimination standard, and providing liability protection for companies that participate in pay practice evaluations. Additionally, the amendments provide that employees will not be prohibited from discussing wages and ban employers from requesting salary history from applicants.

Summary

Wage Discrimination

The amended law prohibits wage discrimination based on sex, sexual orientation, religion, race, color, country of origin, gender identify or expression, disability, or age for comparable work. However, the law allows a variation in rates of pay based on the following:

- Seniority
- Experience
- Training
- Skill or Ability
- Availability for other operational duties

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- Shift worked (Time and day)
- Duties performed regularly or occasionally

The standard in which wage discrimination is determined is now identified as “comparable work” rather than “equal work.” Comparable work is defined as work that requires similar skill, effort, and responsibility performed in a similar environment. Employers are permitted to allow a wage differential if the following can be demonstrated:

- Pay practices are fair
- Differential is based on the following factors:
 - Job-related training, education, or experience
 - Seniority system (Leave of absence cannot reduce seniority)
 - Merit System
 - Earnings measured by production or performance
 - Geographic Location (Cost of Living)
 - Shift differential that is not based on or derive from protected characteristics
 - Work-related travel
 - Bona fide factor
- Above factors can reasonably explain a differential

It is unlawful to use wage history as a justification for a pay differential and employers cannot reduce a pay rate to comply with the law. Employees may not waive any rights regarding the wage rate they are entitled to unless health insurance or retirement benefits are provided.

Employers cannot prohibit employees from discussing wages in any context and may not retaliate against employees who engage in discussion. Employees cannot be required to sign a waiver or agreement to deny these rights.

Salary History Inquiry Restriction

The amendments enforce restrictions on how employers can utilize salary or wage history and are prohibited from engaging in the following:

- Seeking applicants' wage history
- Determining rate of pay based on wage history
- Using wage history as a condition for employment or for considering employment

Employers cannot be penalized for having knowledge of a current employee's wage

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history and are permitted to verify information voluntarily provided by the employee. Employers may confirm or rely on wage history to support a higher wage rate if such rate is not based on or derive from protected characteristics.

Wage Range Provision

Employers must provide a wage range for any position upon request from an applicant whether the applicant is a new hire or current employee moving into a new position. This provides applicants with an understanding of the approximate salary range and should be provided prior to making any compensation agreements.

Employers may not discriminate or retaliate against an employee for requesting a wage range or refusing to provide wage history. Refusing to interview, hire, promote, or employ an applicant for requesting a wage range or refusing to provide wage history is strictly prohibited.

Pay Practice Evaluations

Employers who participate in a self-evaluation of their pay practices are provided with liability protection from any actions alleging unlawful wage differentials. To secure protection from liabilities, employers must demonstrate they have done the following:

- Conducted a good faith evaluation within the past two years and prior to any legal action
- Eliminated all unlawful practices

The evaluation form provided by the employer or issued by the Department of Labor must reflect that the employer acted to identify, prevent, and further mitigate any violations. This form must be retained as evidence and employers will have 90 days to make any adjustments identified. To prove the employer's due diligence, the evaluation must include the following:

- Detailed analysis of comparable work, compensation, and permitted reasons for wage differentials
- Reasonable effort to identify similar jobs and whether employees are using a consistent fact-based approach
- All relevant jobs and active employees within those jobs
- All relevant and available data

Notice Requirement

The Director of Labor and Training must prepare or approve a written notice that

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employers are then required to post. Failure to comply can result in fines between \$100 and \$500.

Enforcement and Penalties

Applicants as well as current and former employees can submit complaints alleging a wage discrimination violation within two years of occurrence. They must provide written notice to the employer at least 45 days prior to filing a complaint. Employers may be held liable for wage-related damages not to exceed \$10,000, appropriate equitable relief, and attorneys' fees, if applicable. Civil penalties range between \$1,000 and \$5,000, dependent on previous violations. See [Employer Resource](#) for additional information.

Employer Next Steps

- Employers who hire and employ in Rhode Island should consider revising application forms and interview questions to avoid asking questions about applicants' salary histories and review current pay practices and self-evaluate to identify any compensatory inequities.
- Employers may want to consider a proactive pay equity audit to take advantage of the safe harbor under the new Rhode Island law.
- Please [email us](#) if you would like additional information regarding our Compensation Benchmarking and Pay Equity services.

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